

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	
<b>v.</b>	<b>CRIMINAL NUMBER 15-306</b>
<b>HASAN MORRISON</b>	

Baylson, J.

January 27, 2017

**MEMORANDUM RE: DEFENDANT’S MOTION  
TO SUPPRESS PHYSICAL EVIDENCE**

**I. Introduction**

Defendant Hasan Morrison (“Defendant” or “Morrison”) is charged with one count of conspiracy to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. § 846. (ECF 1, Indictment at 1).

Defendant moves to suppress evidence seized from a 2003 black Honda Odyssey (the “Vehicle”) he was driving on September 10, 2010. (ECF 22, “Def.’s Mot”). The Government filed an Opposition to Defendant’s motion on October 13, 2016, 2016 (ECF 27, “Gov’t Opp’n”).

On October 17, 2016, the Court held a hearing (the “Suppression Hearing”), during which the Government called two witnesses, Pennsylvania State Police Corporals Michael P. Skahill (“Skahill”) and Keye A. Wysocki (“Wysocki”). Following the Suppression Hearing, Morrison filed a supplemental memorandum of law on November 16, 2016. (ECF 36, “Def.’s Supp. Mem.”).

Upon consideration of all the parties’ submissions and arguments, the evidence of record, and for the following reasons, Defendant’s Motion will be **DENIED**.

## **II. Findings of Fact**

In 2009, Skahill was assigned to a wiretap investigation of a drug trafficking conspiracy commenced by the Pennsylvania State Police. (ECF 35, Tr. of Oct. 17, 2016 Hrg. (“Tr.”) p. 13:1-3). Sometime after July 2010, Skahill applied for and received authorization to intercept two cellular telephones of an individual named Michael Tucker (“Tucker”), who he believed was a source of supply to another individual under investigation. (Id. p. 19:14-16; 21:10-11). Skahill intercepted these two cellular telephones between September 2, 2010 and September 10, 2010. (Id. p. 21:22-24).

During the course of the investigation, Skahill learned that Tucker was “most comfortable” conducting drug transactions in the parking lot of his apartment building, located at 2200 Benjamin Franklin Parkway in Philadelphia (the “Residence”), and coordinating drug transactions through text message or cell phone calls, using established drug slang. (Id. p. 23:14-16; 24:1-15). He also learned that it was not necessary for Tucker to have lengthy interactions with people with whom he planned to conduct drug transactions because “he had an established relationship” with them and “it was already understood.” (Id. p. 24:8-13). For instance, when an individual wished to indicate that he had arrived at the Residence, he would typically text only “hey, I’m here” or “I am pulling in.” (Id. p. 27:1-7)

“From day one” of the investigation, Skahill and other surveillance personnel would surveil meetings between Tucker and various individuals that came to the Residence, and, thereafter, would “try[] to identify vehicles, persons, locations, and possible places where those individuals, after they met with [Tucker], where they may go.” (Id. p. 22:4-15).

On September 3, 2010, Skahill began intercepting text messages between Tucker and an individual using a telephone that was later identified as Morrison’s. (Id. p. 27:14-22). Morrison

was not a known suspect in the investigation at the time, nor had he ever been physically observed by Skahill or the surveillance personnel. (Id. p. 55:1-25; 56:1-9). The intercepted messages were brief and “almost always” about arrangements to meet at the Residence. (Id. p. 28:1-2). Morrison’s messages to Tucker sometimes used the term “little,” which Skahill testified he did not know to be a commonly understood drug reference. (Id. p. 57:17-26; 58:1-5).

On September 6, 2010, Skahill intercepted text messages between Tucker and Morrison, in which the two arranged to meet that evening. (Id. p. 30:7-11). At 7:15 P.M., surveillance personnel observed the Vehicle arrive in the parking lot of Tucker’s Residence. (Id. p. 33:4-6). Tucker was observed entering and exiting the Residence twice, the first time carrying a newspaper under his arm; the second, an unknown object. (Id. p. 34:1-14).

On September 7, 2010, Skahill again intercepted text messages between Tucker and Morrison, in which the two arranged to meet in the parking lot of the Residence at 9 P.M. that evening. (Id. p. 35:7-11). Tucker and Morrison did not, however, meet that evening, for which Tucker later apologized to Morrison. (Id. p. 36:6-24).

On September 8, 2010, Skahill again intercepted text messages between Tucker and Morrison, in which the two arranged to meet that evening. (Id. p. 36:9-12). This time, after the surveillance personnel observed the Vehicle arrive in the parking lot of the Residence, they observed Tucker enter and then exit the Vehicle once. (Id. p. 38:17-24).

On September 10, 2010, Skahill again intercepted text messages between Tucker and Morrison, in which the two arranged to meet that night at 8:30 P.M. (Id. p. 40:7-18). “Within a minute” of this interaction, Skahill also intercepted text messages from Tucker to two other individuals that Skahill believed to be Tucker’s distributors, each of which said, “Tonight 9.” (Id. p. 41:7-23).

Skahill then contacted Wysocki to inform him that he was anticipating a drug-related meeting between Tucker and Morrison, and that he wanted Wysocki to conduct a traffic stop of Morrison after the two met. (Id. p. 42:16-22). At approximately 8:00 P.M., Skahill intercepted texts messages between Tucker and Morrison confirming the details of their meeting, and, shortly thereafter, surveillance officers observed the Vehicle arrive at the parking lot of the Residence. (Id. p. 43:14-20). At 8:13 P.M., surveillance personnel observed Tucker enter the Vehicle's passenger seat, then exit the Vehicle to retrieve a "clearly empty gym bag" from the back of the Vehicle, and then reenter the Vehicle's passenger seat. (Id. p. 46:3-25; 67:6-24). Three minutes later, surveillance personnel observed Tucker exit the Vehicle with the gym bag, which at that point was "full with some item." (Id. p. 47:3-10). Tucker then entered and then exited the Residence, and then re-entered the Vehicle, this time holding a "computer laptop-type bag." (Id.). Shortly thereafter, surveillance personnel observed Tucker exit the Vehicle emptyhanded. (Id. p. 48:11-13). After about five minutes, Morrison drove away. (Id. 48:19-21).

Thereafter, Skahill contacted Wysocki and asked him to make a traffic stop of the Vehicle by "look[ing] for a traffic violation and build[ing] from there." (Id. p. 50:5-8). According to Skahill, his intention was for Wysocki to gain consent to search the Vehicle, but that if he could not, to seize the Vehicle anyway "based on all the information and [his] knowledge of what had already taken place that day, along with the information that [he] knew about the wiretap investigation." (Id. p. 50, 69:13-17).

At approximately 8:45 P.M., Wysocki and another trooper, James Wisnieski ("Wisnieski")—both of whom were fully apprised, by the surveillance personnel, of the events of that evening—observed Morrison roll through a stop sign at the corner of Front and Tasker

Street. (Id. p. 70:16-24). The officers pulled over the Vehicle and, when they approached it, noticed that Morrison was the only individual inside the Vehicle. The officers informed Morrison that they were pulling him over because he had run a stop sign. (Id. p. 72:22-25). Wysocki then asked Morrison for his license, registration and insurance. (Id. p. 73:1-2). Asked who owned the Vehicle and for what he was using it, Morrison responded that he was borrowing it from his niece, had just come from Dunkin Donuts, and was on his way to his mother's house. (Id. p. 73:3-12). Wysocki then peered inside the Vehicle to see "anything that was visible," but nothing was. (Id.).

Wysocki then called his dispatcher and asked him to (1) check the validity of Morrison's license and (2) run a criminal record check for Morrison. (Id. p. 73:16-22). In the meantime, Wysocki prepared a written warning notice for Morrison's stop sign violation. (Id. p. 74:2-4). Shortly thereafter, Wysocki was informed that Morrison's license was valid, and that he had a 19-page criminal history report that included, *inter alia*, a cocaine trafficking conviction that resulted in a sentence of 97 months' incarceration, for which he was still on supervised release from Federal Court. (Id. p. 52:14-25-53:1-3; 73:14-20; 74:9-20; 86:1-13). When Wysocki approached the Vehicle again, he noticed that there were two (2) cell phones in the center console, a screwdriver, several air fresheners hanging both from the gear shifter and inside the air vents, and a black laptop bag in the back seat. (Id. p. 75:17-25-76:1-12). Wysocki informed Morrison that he was issuing him a written warning, which Morrison signed as acknowledgement of receipt. (Id.). Wysocki then told Morrison that he was "free to go" and to "have a good night," and "turned and walked away from the Vehicle." (Id. p. 76:18-21).

Before Morrison could leave, however, Wysocki again approached the Vehicle, and asked Morrison if he could ask him "a few questions," to which Morrison replied that he could.

(Id.). Wysocki proceeded to ask Morrison questions including, *inter alia*, whether there were any “bombs, guns, drugs or dead bodies” in the Vehicle, to which Morrison, laughing, said “no.” (Id. p. 77:15-22; 78:1-8). According to Wysocki, at that point, Morrison “started to get nervous.” (Id.).

Next, Wysocki asked Morrison if he could search the Vehicle. (Id. p. 78:9-11). When Morrison responded that he could not, Wysocki informed Morrison that he would be seizing the Vehicle and applying for a search warrant. (Id. p. 78:12-15). Wysocki then, for his safety, patted down Morrison’s waistband area from inside the car, but found no contraband. (Id. p. 79:17-25; 80:1-3). Nevertheless, Wysocki proceeded to handcuff Morrison from inside the Vehicle, and then remove him from the Vehicle. (Id. 79:5-22). Wysocki said that this procedure was justified because “it’s obvious people can hide things in other areas” and, with Morrison handcuffed, he was unable to grab things, “especially the screwdriver,” which was “within arm’s reach.” (Id.). After removing him from the Vehicle, Wysocki patted him down once more but, again, found no contraband. (Id. p. 79:23-25; 80:1-2).

Wysocki then told Morrison that the reason he had to exit the Vehicle was because he planned to seize it. (Id. p. 80:13-17). Wysocki asked Morrison for a phone number at which he could be reached so that the Vehicle could be returned after it was searched. (Id. p. 81:7-15). The phone number Morrison provided—(267)-506-4390—matched the number that Skahill had been intercepting since September 6, 2010. (Id.).

Wysocki then again told Morrison that he was “free to go.” (Id. p. 82:5-12). Morrison told Wysocki that he could not leave without his work vest, so Wysocki entered the Vehicle to retrieve the vest, and gave it to Morrison after ensuring it did not contain contraband. (Id. p.

82:13-23). At approximately 9:00 P.M., Morrison left the scene, walking west on Greenwich Street. (Id.).

Approximately 5 minutes later, Morrison returned to the scene, and told Wysocki that he had changed his mind, and that he wanted the officers to search the Vehicle in his presence. (Id. p. 83:7-24). Wysocki refused, explaining that Morrison had “already told [him he] didn’t want to give consent[,] [that he] was going to apply for a search warrant, and [he] had already called for a tow truck.” (Id.).

At 10:53 P.M., an officer exposed the Vehicle to a drug canine. (Id. p. 51:7-11). The canine alerted to the presence of drugs in the driver’s side of the Vehicle. (Id. 51).

On September 13, 2010, Skahill applied for a Search Warrant from Pennsylvania Superior Court Judge Stephen J. McEwen, which he authorized. (Id. p. 53:4-24; see ECF 27, Ex. 1, at p. 2 “Application”). Later that day, the Vehicle was searched pursuant to the Search Warrant. During the course of the search, law enforcement recovered, *inter alia*, “\$76,031 U.S. currency from an after-market hidden compartment in the driver’s side rear slider door; \$5,007 U.S. currency from the center console, one roll of plastic wrap, one bag of runner bands, two rolls of tape, one boost mobile cellular telephone, numerous air fresheners, two laptop computer bags, two carry bags, and paperwork in the name of Hasan Morrison.” (Gov’t Opp.’n at 11-12).

### **III. Discussion**

“Fourth Amendment analysis typically proceeds in three stages.” United States v. Dupree, 617 F.3d 724, 730 (3d Cir. 2010). First, it must be determined “whether a Fourth Amendment event, such as a search or a seizure, has occurred,” and if so, when. Id. (citation omitted). Next, the Court must “consider whether that search or seizure was reasonable.” Id.

Third, if the search or seizure was not reasonable, the Court must “then determine whether the circumstances warrant suppression of the evidence.” Id.

In United States v. Mosley, 454 F.3d 249, 253 (3d Cir. 2006), the Third Circuit highlighted the analytical distinction, for purposes of the Fourth Amendment, between an “auto search” event—where the legality of the search of a car is challenged—and a “traffic stop” event—where the legality of the seizure of the defendant is challenged. In this case, both events occurred.

As explained more fully below, the officers were entitled to conduct an “auto search” of the Vehicle, pursuant to the automobile exception to the warrant requirement. Accordingly, regardless of whether the “traffic stop” violated Morrison’s Fourth Amendment rights, suppression of the evidence seized from the Vehicle is not warranted because the automobile exception gave the officers an independent source of authority on which to conduct the “auto search.”

#### **A. Search of the Vehicle**

The threshold, and dispositive, issue is whether Wysocki and Wisnieski could lawfully conduct an “auto search” of the Vehicle *prior to* the traffic stop, pursuant to the automobile exception to the warrant requirement.

##### **i. Applicable Law**

It is well settled that a search conducted without a warrant issued upon probable cause is “*per se* unreasonable . . . subject only to a few specifically established and well-delineated exceptions.” Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (internal citations omitted). One such exception is the automobile exception. See United States v. Salmon, 944 F.2d 1106,

1123 (3d Cir. 1991), abrogated on other grounds by United States v. Caraballo–Rodriguez, 726 F.3d 418 (3d Cir. 2013) (en banc).

“The automobile exception permits vehicle searches without a warrant if there is ‘probable cause to believe that the vehicle contains evidence of a crime.’” United States v. Donahue, 764 F.3d 293, 299–300 (3d Cir. 2014) (quoting Salmon, 944 F.2d at 1106). While a seizure or search of property without a warrant ordinarily requires a showing of both probable cause and exigent circumstances, the ‘ready mobility’ of automobiles permits their search based only on probable cause.” United States v. Burton, 288 F.3d 91, 100-101 (3d Cir. 2002) (internal citations omitted).

“A police officer has probable cause to conduct a search when the facts available to him would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present.” Florida v. Harris, 133 S.Ct. 1050, 1055 (2013) (internal citations omitted). “The test for probable cause is not reducible to ‘precise definition or quantification.’” Id. (quoting Maryland v. Pringle, 540 U.S. 366, 371 (2003)). Rather, it is “a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” Pringle, 540 U.S. at 370 (internal citation omitted). The Court must, therefore, “evaluate the events which occurred leading up to the . . . search, and then [decide] whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to . . . probable cause.” Donahue, 764 F.3d at 301 (internal quotations and citations omitted). “If there was a ‘fair probability that contraband or evidence of a crime’ would have been found, there was probable cause for the search.” Id. (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)).

The officer conducting a search need not personally possess knowledge of the facts giving rise to the probable cause to conduct the search. See Burton, 288 F.3d at 99 (“[T]he arresting officers need not possess . . . the facts supporting probable cause, but can instead rely on an instruction to arrest delivered by other officers possessing probable cause.”).

Additionally, the police’s authority to conduct such a search “adheres even if the automobile has been seized and immobilized at the stationhouse, provided the police had probable cause to search when they initially stopped the vehicle.” United States v. Dennis, 527 Fed. App’x 221, 223 (3d Cir. 2013) (citing Chambers v. Maroney, 399 U.S. 42, 51-52 (1970)) (upholding the warrantless search of a car secured at a police stationhouse where police had probable cause to search the car when they initially stopped it); see also California v. Acevedo, 500 U.S. 565, 570 (1991) (“Following Chambers, if the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search of the vehicle.”).

## **ii. Application**

The Government argues that “the circumstances surrounding this long term wiretap investigation of major cocaine traffickers, including the circumstances surrounding the September 10, 2010 meeting between Morrison and Tucker in the [Vehicle], clearly demonstrate[] that there was at least a fair probability that contraband or evidence of a crime would be found inside of the [Vehicle]. Therefore, the officers had probable cause to stop, seize and conduct a warrantless search of the [Vehicle].” (Gov’t Opp’n at 17-18).

Morrison, for his part, argues that “there is simply no evidence that supports a conclusion that [Morrison] was engaging in criminal activity . . . on September 10, 2010. An individual who agrees to meet with someone who the police believe to be a drug dealer is not evidence that the

individual is himself a drug dealer,” and Morrison “could have had any number of legitimate reasons for meeting [Tucker].” (Def.’s Mot. at 5).

The Court agrees with the Government. The officers had probable cause to search the Vehicle, prior to the traffic stop of Morrison, based on the information they had gathered during the course of the investigation of Tucker.

United States v. Burton, 288 F.3d 91 (3d Cir. 2002), is instructive here. In that case, law enforcement had been investigating the activities of a known drug operation in Philadelphia using a confidential informant (“CI”) to conduct a controlled buy of drugs. Id. at 94. The CI’s microphone picked up a conversation that law enforcement could hear, regarding a drug deal that was occurring at a nearby residence. Id. Shortly thereafter, surveillance personnel observed Burton leave that residence carrying an opaque plastic bag, and then drive away in a car. The surveillance personnel followed Burton, and when he again parked and exited the car, they instructed him to stop, with firearms drawn. The officers proceeded to call for a dog to sniff the car, which alerted to the presence of drugs. Based on that information, the officers applied for a search warrant for the car, which was granted, and Burton moved to suppress the evidence found in the car, arguing that the arrest was unconstitutional. Id. at 101.

The Third Circuit, recognizing that Burton was not originally a suspect in the drug conspiracy that law enforcement had been investigating, noted that it was an “understatement to describe [the day of his arrest] as an unlucky day for Marco Burton.” Id. at 94. The court considered whether, assuming, *arguendo*, that the dog sniff was an unconstitutional “exploitation of Burton’s alleged[ly] unlawful arrest,” the evidence seized from the car was nonetheless admissible pursuant to the automobile exception. The Court explained,

Because the [officers] observed Burton leave what they thought to be a drug deal and place the result of that transaction in his trunk,

probable cause existed to conclude that the [car] itself was involved in an illegality, regardless of Burton’s seizure. . . [W]hen the [officers] interdicted Burton . . . [they] had probable cause to search the [car] immediately. Yet [they] did not do so. Instead, out of caution the Task Force, at most, seized the [car] until a drug sniffing dog would be found to confirm what was already suspected to be true: that it contained contraband.

Id. at 101 (quoting Chambers, 399 U.S. 42, 52 (1970)).

The Third Circuit’s decision in United States v. Dennis, 527 Fed. App’x 221 (2013)—the facts of which are remarkably similar to those present in the instant case—is also instructive, but not binding. There, the Drug Enforcement Agency (“DEA”) intercepted phone calls between a known drug dealer, who they were investigating, and Dennis, in which the two men were negotiating and coordinating an in-person drug buy in Philadelphia. Id. at 221. Surveillance personnel, who were at the scene of the planned meeting spot, observed Dennis arrive in a car. The dealer entered the car, and then exited 15 minutes later. Id. Dennis then drove away. The surveillance personnel then informed state police of the suspected drug sale and requested that they “develop an independent basis for stopping” Dennis. A criminal background check revealed that Dennis had prior convictions but no open warrants, and the officers found no contraband on Dennis. Id. The officers also noticed that Dennis’ car smelled strongly of air fresheners. When Dennis refused to give consent to search his car, the officers called a canine to the scene. When the dogs did not alert to the presence of drugs, the officers told Dennis that he was free to leave, but that his car would be seized because they suspected that it contained contraband. Id.

The Third Circuit, affirming the District Court, held that the combination of the “[r]ecorded phone calls reveal[ing] Dennis’s plan to purchase drugs from [the drug dealer] at a specific time and location” coupled with the fact that “DEA agents then observed [the dealer]

enter Dennis's car at the specified time and location" were sufficient to conclude that probable cause existed to believe that Dennis's car contained contraband. Id. 224. The Court further explained that the automobile exception applies "even if the automobile has been seized and immobilized at the stationhouse, provided the police had probable cause to search when they initially stopped the vehicle." Id. at 223 (citing Chambers, 339 U.S. at 51-52).

In both Burton and Dennis, the court held that law enforcement was entitled to rely upon its experience and expertise regarding drug trafficking conspiracies to conclude that probable cause to search the automobiles existed, even absent direct evidence that they would find contraband. Courts in this Circuit routinely hold that such reliance is permissible, under various factual circumstances. See, e.g., United States v. Stearn, 597 F.3d 540, 558 (3d Cir. 2010) ("When the crime under investigation is drug distribution, a magistrate may find probable cause to search the target's residence even without direct evidence that contraband will be found there [because] evidence associated with drug dealing needs to be stored somewhere, and . . . a dealer will have the opportunity to conceal it in his home."); United States v. Ushery, 526 F. Supp. 2d 497, 503–04 (M.D. Pa. 2007), aff'd, 400 F. App'x 497, 504 (3d Cir. 2010) ("In light of the officers' experience in drug enforcement and their frequent encounters with the smell of marijuana, the court finds their testimony regarding the odor emanating from the Cadillac to be credible. The officers had probable cause to search the Cadillac based on the smell of burnt marijuana particularized to the passenger compartment of the vehicle. This probable cause allowed them to search the vehicle without a warrant pursuant to the automobile exception to the warrant requirement."); United States v. Adams, No. 09-cr-0015, 2010 WL 481074, at \*3 (M.D. Pa. Feb. 4, 2010) (police entitled to rely on confidential informant's tip to support probable cause because, *inter alia*, "the content of the tip—information regarding the location, time, and

amount of drugs to be purchased—was specific information not available to an outside observer.”).

Applied here, based on their investigation of Tucker’s drug conspiracy, the officers were entitled to conclude that there was a “fair probability that contraband or evidence of a crime” would be found in the Vehicle. Gates, 462 U.S. at 238. Skahill had learned, during the course of the investigation, that Tucker frequently conducted drug transactions in the parking lot of his Residence. On three occasions within a single week, including on September 10, 2010, surveillance personnel observed the Vehicle enter the parking lot of the Residence, and observed Tucker enter the Vehicle. These meetings were also temporally related to Tucker’s text messages that Skahill intercepted, and Skahill understood them to be communications to coordinate meetings to conduct drug transactions.

The fact that Skahill—rather than Wysocki and Wisnieski—had personal knowledge of the facts supporting probable cause is no impediment to the lawfulness of the search. “It is well established . . . that the arresting officer need not possess an encyclopedic knowledge of the facts supporting probable cause, but can instead rely on an instruction to arrest delivered by other officers possessing probable cause. An officer can lawfully act solely on the basis of statements issued by fellow officers if the officers issuing the statements possessed the facts and circumstances necessary to support a finding of the requisite basis.” Burton, 288 F.3d at 99 (citing Rogers v. Powell, 120 F.3d 446, 453 (3d Cir. 1997) (internal citations omitted)). Because Skahill possessed sufficient facts to support probable cause to search the Vehicle when he called Wysocki for assistance, the resulting seizure of the Vehicle by Wysocki was reasonable.

Additionally, the fact that Wysocki chose to transport the Vehicle for a dog sniff and then apply for the Search Warrant before searching it—rather than search the Vehicle at the site of the

traffic stop—did not obviate his authority to search the Vehicle, at that later time, pursuant to the automobile exception. As the Supreme Court has explained, “[f]or constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.” Chambers, 399 U.S. at 52.

Accordingly, the “auto search” event did not violate Morrison’s Fourth Amendment rights.

### **B. Independent Source Doctrine**

Because the search of the Vehicle was constitutional, the Court need not reach whether the traffic stop of Morrison was also constitutional<sup>1</sup> because, even if it was not, the evidence seized from the Vehicle will not be suppressed, pursuant to the independent source doctrine.

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<sup>1</sup> In arguing that his seizure (i.e. the “traffic stop”) was unconstitutional, Morrison relies heavily on Rodriguez v. United States, 135 S. Ct. 1609, 1612 (2015), where the Supreme Court recently held that “[a] seizure justified only by a police-observed traffic violation . . . becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation,” unless the prolongation is independently supported by “reasonable suspicion of criminal activity.” Id. at 1616; (see Def.’s Supp. Mem. at 4-6). In that case, because conducting a dog sniff was “a measure aimed at detecting evidence of ordinary criminal wrongdoing,” it went beyond the “mission” of the traffic stop, and therefore unconstitutionally “prolonged” it. Id. at 1615. The Supreme Court remanded the case to the Eighth Circuit to consider whether the prolonged stop was nonetheless lawful because it was independently supported by reasonable suspicion.

Here, since Morrison allegedly ran a stop sign, the initial seizure of him was legal, even though the traffic violation was clearly a pretext on which to investigate potentially criminal activity that occurred prior to the traffic violation. See Whren v. United States, 517 U.S. 806 (1996) (establishing the bright-line rule that any technical violation of a traffic code legitimizes a stop, even if the stop is merely pretext for an investigation of some other crime). However, because seizure of the Vehicle was legal pursuant to the automobile exception, the Court need not determine whether, under Rodriguez, the stop went beyond the lawful mission of a traffic stop, or whether the officers were entitled to “prolong” the stop based on a reasonable suspicion that Morrison was engaged in criminal activity.

Evidence that is seized in violation of the Fourth Amendment must be excluded unless “the connection between the illegal police conduct and the discovery and seizure of the evidence is ‘so attenuated as to dissipate the taint.’” Segura v. United States, 468 U.S. 796, 805 (1984); Wong Sun v. United States, 371 U.S. 471, 488 (1963). Where the Government can show that seizure of the challenged evidence resulted from an “independent source,” the evidence is purged from the taint of the initial illegality. United States v. Nelson, 593 F.2d 543, 544 (3d Cir. 1979) (per curiam) (citing Wong Sun, 371 U.S. at 487).

Segura provides an apt example. There, law enforcement agents arrested a couple who had just purchased cocaine from the defendant. 468 U.S. at 800. Given the circumstances, including the late hour of the arrest and the unlikelihood of procuring a search warrant that evening, the agents decided to “secure” the defendant’s apartment to prevent the destruction of evidence. Id. The agents arrived at his apartment, entered without consent, and conducted a limited security check. Id. at 800-1. The Court held that the evidence seized pursuant to the valid search warrant did not have to be excluded as fruit of the illegal entry because the search warrant issued was based entirely upon information that was known by the agents prior to the illegal entry and, as such, constituted an independent source. Id. at 814.

The Supreme Court addressed the independent source doctrine again in Murray v. United States, 487 U.S. 533, 537 (1988), expounding the doctrine as follows:

“[T]he interest of society in deterring unlawful police conduct and the public interest in having juries receive all probative evidence of a crime are properly balanced by putting the police in the same, not a *worse*, position that they would have been in if no police error or misconduct had occurred. When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation.”

Id. (quoting Nix v. Williams, 467 U.S. 431, 443 (1984)).

The Third Circuit applied this reasoning in Burton, 288 F.3d at 101. The Court held that even if the defendant's arrest had been unlawful, and the subsequent dog sniff of the car and issuance of the warrant was "a result of the exploitation" of that unlawful arrest, the officers "had probable cause to search the [car] immediately" and therefore could have immediately searched the vehicle. Id. The court explained, "[g]iven this independent authority to search the [car], separate and apart from the authority to arrest Burton, we believe that the Task Force had an independent source for its seized of the evidence inside it," such that exclusion "would put the police in a worse position than they would have been in absent any error or violation." Id. (quoting Nix, 467 U.S. at 443).

The independent source doctrine applies here with equal force. Any potential violation of Morrison's constitutional rights based on the traffic stop would not require suppression of the evidence eventually seized from the Vehicle because the evidence had an "independent source"—i.e., the officers' probable cause to search the Vehicle before the traffic stop. Therefore, suppressing the evidence lawfully seized from the Vehicle would put the officers in a worse—not equal—position than they would be in absent any officer misconduct. "Such a result is inconsistent with the goal of the exclusionary rule." Id.

### **C. Good Faith Exception**

Even if the search of the Vehicle was not proper based on the automobile exception, the Court would still not suppress the evidence seized from the Vehicle because the good faith exception to the exclusionary rule, as set forth in United States v. Leon, 468 U.S. 897 (1984), applies here. Pursuant to the good faith exception, the suppression of evidence "is inappropriate when an officer executes a search in objectively reasonable reliance on a warrant's authority." United States v. Williams, 3 F.3d 69, 74 (3d Cir. 1993). The Supreme Court developed the

exclusionary rule to deter unlawful police conduct. Leon, 468 U.S. at 906. However, where law enforcement officers act in the “objectively reasonable belief that their conduct d[oes] not violate the Fourth Amendment,” “the marginal or nonexistent [deterrent] benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” Id. at 918, 922. Thus, if an officer has obtained a warrant and executed it in good faith, “there is no police illegality and thus nothing to deter.” Id. at 921.

“The test for whether the good faith exception applies is ‘whether a reasonably well trained officer would have known that the search was illegal despite the magistrate’s authorization.’” United States v. Loy, 191 F.3d 360, 367 (3d Cir. 1999) (quoting Leon, 468 U.S. at 922 n. 23. The Third Circuit has made clear that “[t]he mere existence of a warrant typically suffices to prove that an officer conducted a search in good faith[,] and justifies application of the good faith exception.” Hodge, 246 F.3d at 307–308 (3d Cir. 2001) (citing Leon, 468 U.S. at 922). Nevertheless, the Third Circuit has identified four narrow situations in which an officer’s reliance on a warrant is not reasonable and therefore does not trigger the good faith exception:

- (1) when the magistrate judge issued the warrant in reliance on a deliberately or recklessly false affidavit;
- (2) when the magistrate judge abandoned his judicial role and failed to perform his neutral and detached function;
- (3) when the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or
- (4) when the warrant was so facially deficient that it failed to particularize the place to be searched or the things to be seized.

United States v. Ninety–Two Thousand Four Hundred Twenty–Two Dollars and Fifty–Seven Cents, 307 F.3d 137, 146 (3d Cir. 2002).

In the present case, Morrison does not argue that the good faith exception should not apply based on one of the four recognized situations cited above.<sup>2</sup> That is, he does not argue that the Application in support of the Search Warrant was false, facially deficient, or lacking indicia of probable cause, nor that there was any evidence that Judge McEwen failed to act in a neutral or detached manner in issuing it. Leon, 468 U.S. at 922.

Instead, Morrison argues that “this is not a case where police acted in good faith reliance on a defective warrant. . . [T]his is a case where police intentionally arrested and searched a citizen and then seized his vehicle without probable cause,” which resulted in “obtain[ing] evidence that [was] used to secure a warrant.” (Def.’s Supp. Mem. at 8).

But this is not a fair characterization of the Application supporting the Search Warrant. As explained above, there was sufficient evidence to support probable cause to seize the Vehicle prior to the traffic stop, and the Application in support of the Search Warrant detailed all of that evidence. (See Application p. 247-281; Tr. p. 45:18-21 (noting that the facts to which Skahill testified at the Suppression Hearing were “also contained in the [Application].”). Moreover, to the extent Morrison is arguing that the Application improperly included the “obtained” evidence that a dog sniff alerted to the presence of drugs in the Vehicle (see Application p. 275), as explained above, such evidence was not tainted “fruit” just because it was gathered after the Vehicle was seized. See Dennis, 527 Fed. App’x 221, 223 (The police’s authority to conduct a search “adheres even if the automobile has been seized and immobilized at the stationhouse, provided the police had probable cause to search when they initially stopped the vehicle.”).

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<sup>2</sup> Morrison’s Supplemental Brief offers an inaccurate and improperly-cited list of the exceptions to the good faith doctrine, including “where the officer’s reliance on the warrant was neither in good faith nor objectively reasonable,” on which he relies. (Def.’s Supp. Mem. at 7-8).

Accordingly, the Court finds that the officers executed the search of the Vehicle in good faith reliance on the validly-issued Search Warrant.

#### **IV. Conclusions**

For the foregoing reasons, Defendant's Motion to Suppress Physical Evidence will be **DENIED**. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	
<b>v.</b>	<b>CRIMINAL NUMBER 15-306</b>
<b>HASAN MORRISON</b>	

**ORDER**

And NOW, this 27<sup>th</sup> day of January 2017, for the reasons stated in the foregoing memorandum, it is hereby **ORDERED** that the Defendant's Motion to Suppress Physical Evidence pursuant to the Fourth Amendment of the Constitution (ECF No. 22) is **DENIED**.

**BY THE COURT:**

*/s/ Michael M. Baylson*

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**Michael M. Baylson, U.S.D.J.**